

**REMARKS**

Reconsideration and allowance of this application are respectfully requested in view of the foregoing amendments and the following remarks.

Upon entry of this Amendment, claims 1-3, 8, 10-15, 18 and 22-25 will be pending in the application. Claim 8 has been amended to depend from independent claim 1 and claims 7, 9, 19-21, 27 and 28 have been cancelled.

Claims 27 and 28 were rejected under 35 U.S.C. §112, first paragraph and claim 27 was rejected under 35 U.S.C. §112, second paragraph. However, the rejections of claims 27 and 28 are moot because of the cancellation of those rejected claims.

Claims 7-9, 27 and 28 were rejected under 35 U.S.C. §102(b) over Gustafsson. With respect to claims 7, 9, 27 and 28, this rejection is moot because of the cancellation of those rejected claims. Claim 1 was not rejected based on Gustafsson alone under 35 U.S.C. §102(b) and therefore will be addressed along with dependent claim 8 below in conjunction with the rejection(s) that pertain(s) to claim 1.

Claims 19, 22 and 23 were rejected under 35 U.S.C. §102(b) over Harte et al. (U.S. Patent No. 3,693,623). During a teleconference on February 13, 2003, the Examiner agreed with Applicants' representative that claims 22 and 23 cannot be rejected under 35 U.S.C. §102(b) when these claims depend from claim 1, which was not rejected under 35 U.S.C. §102(b). Therefore, the rejection is in error and withdrawal is respectfully requested.

Claims 1 and 13-15 were rejected under 35 U.S.C. §103(a) over Harte et al. and Allemann et al. This rejection is respectfully traversed because there is no motivation or suggestion to combine Harte et al. and Allemann et al.

Harte et al. teach a depilation apparatus that effects depilation by photocoagulation, e.g., using light energy to destroy hair. The depilation apparatus of Harte et al. includes a selective filter for selecting green light or UV light, which is applied to tissue, blood vessels

or hair follicles (col. 3, lines 59 to col. 4, line 8). The selective filter of Harte et al. does not comprise water, as recited in independent claim 1 and the Office Action relies on Allemann et al. for its teaching of a water filter to remedy this deficiency.

In contrast to the Office Action, there is no motivation to combine Allemann et al. and Harte et al. because they are drawn to structures from diverse backgrounds from which the Examiner is “picking” and “choosing” among the various elements of Allemann et al. and Harte et al., to reconstruct Applicants’ claims using Applicants’ specification as a blueprint, not motivation or suggestion from the references. This is improper.

Allemann et al. teach a photodynamic therapy process in which red light is applied to a tumor to trigger photo-chemical changes in a therapeutic agent administered and accumulated in the tumor. The photodynamic therapy process of Allemann et al. uses a Xenon lamp, a 10-cm water filter and LL-650 and LS-700 filters to produce the red light. By contrast, Harte et al. discloses a depilation apparatus in which depilation is effected by photocoagulation, e.g., using green or UV light energy to destroy hair. According to col. 1, lines 37-44 of Harte et al., “first attempts at photoepilation were carried out with the ruby laser whose red light, ... is ill suited for coagulation of red hemoglobin pigment in the vascular bed,” (emphasis added) which points away from using the 10-cm water filter of Allemann et al. to produce red light in the depilation apparatus of Harte et al.

Furthermore, there is no motivation or suggestion to combine the 10-cm water filter of Allemann et al. with the selective filter of Harte et al. without using impermissible hindsight because the 10-cm water filter of Allemann et al. does not selectively filter green or UV light as desired by Harte et al. nor would it assist the selective filter of Harte et al. to filter desired wavelengths (green or UV light) for depilation as taught by Harte et al. Thus, Allemann et al. and Harte et al. could not have been combined without the benefit of Applicant’s disclosure and impermissible hindsight. See Grain Processing Corp. v American Maize-Products Co.,

840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988) (“It is impermissible to use the applicant’s disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings in the prior art”). Also see In re Kamm, 172 USPQ 298, 301, 302 (CCPA 1972) (“It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art”).

Moreover, adding the 10-cm water filter of Allemann et al. to the depilation apparatus of Harte et al. would require substantial modification of Harte et al. For example, the selective filter in the depilation apparatus of Harte et al. is a compact filter that filters desired wavelengths (green or UV light) for depilation prior to being focused on an end of an optical fiber. The 10-cm water filter of Allemann et al. is very large compared to the optical fiber and other optics used in Harte et al. and its size is not consistent with those optics. Furthermore, Allemann et al. teach using the 10-cm water filter to produce red light, but do not teach focusing the red light on an optical fiber as shown in Harte et al. Therefore, in addition to the reasons set forth above, one skilled in the art would not have been motivated to combine the 10-cm water filter of Allemann et al. with the selective filter of Harte et al.

Even if combined, the combination of Allemann et al. and Harte et al. does not teach an apparatus for producing a pulse of light which comprises a filter comprising water for filtering out undesired light output frequencies (e.g., skin heating wavelengths of light) to produce a filtered light pulse having an energy of at least 250 J/cm<sup>2</sup>/sec for application to the human or animal body, as recited in independent claim 1. Therefore, independent claim 1 is allowable over the Harte et al. and Allemann et al. combination for at least the reasons set forth above.

Claims 13-15 are allowable by virtue of their dependence on independent claim 1, and also for their recitation of additional patentable features. For example, dependent claim 13 recites, among other features, a power supply connected to the light source and operable to provide a power output pulse or pulse train to drive the light source to produce the light output pulse or pulse train, during which light output pulse or pulse train for at least 80% of the light output period (i.e. the duration of a single pulse or the aggregate of the duration of the pulses within a pulse train excluding intervals between pulses) the light power output is from 75 to 125% of the time-weighted average light power output during the light output period. Both Harte et al., which teaches a pulsed power supply for a linear flash lamp, and Allemann et al., which teaches a 1000W Xenon lamp, are silent as to the specific power supply recited in claim 13. Withdrawal of the rejection of claims 1 and 13-15 is respectfully requested.

Claims 1-3, 20 and 21 were rejected under 35 U.S.C. 103(a) over Harte et al., in view of Allemann et al. as applied to claims 1 and 13-15 above, and further in view of Gustafsson. This rejection is respectfully traversed.

The Office Action relies on Gustafsson to teach circulating water to cool flash tubes and an optical fiber applicator with a convex applicator tip and suggests that the flash tubes of Gustafsson could replace the lamp of Harte et al. However, these does not remedy the deficiencies noted above with respect to Harte et al. and Allemann et al.

Claims 2-3, 8, 20 and 21 are allowable by virtue of their dependence on claim 1, and also for their recitation of additional patentable features. For example, dependent claim 2 recites, among other features, means for defining a flow path for the water, the means being optically transparent at least in a region in which the water acts as the filter. Additionally, dependent claim 8 recites, among other features, that the flow path forms a closed circuit around which the water circulates. As discussed above, the selective filter of Harte et al. does

not comprise water. Allemann et al. does not teach or suggest that the water in the 10-cm water filter disclosed in Allemann et al. has a flow path, as recited in claim 2, nor does Allemann et al. teach or suggest that the water circulates around a closed circuit, as recited in claim 8. Further, neither Harte et al. nor Allemann et al. teach optically transparent means (in a region in which the water acts as the filter) for defining a flow path for the water acting as the filter, as recited in claim 2. Therefore, the combination of Harte et al. and Allemann et al. does not teach optically transparent means (in a region in which the water acts as the filter) for defining a flow path for the water acting as the filter. Withdrawal of the rejection of claims 1-3, 8, 20 and 21 is respectfully requested.

Claims 10-15 were rejected under 35 U.S.C. §103(a) over Harte et al., Allemann et al. and Gustafsson in view of Anderson. This rejection is respectfully traversed.

The Office Action relies on Anderson to teach square pulses and a convex applicator tip. However, these does not remedy the deficiencies noted above with respect to Harte et al., Allemann et al. and Gustafsson.

Claims 10-15 are allowable by virtue of their dependence on claim 1, and also for their recitation of additional patentable features. Withdrawal of the rejection of claims 10-15 is respectfully requested.

Claim 18 was rejected under 35 U.S.C. §103(a) over Harte et al. and Allemann et al. as applied to claim 1 above, and further in view of Vassiliadis et al. This rejection is respectfully traversed.

The Office Action relies on Vassiliadis et al. to teach the employment of an interlock on a filter. However, this does not remedy the deficiencies noted above with respect to Harte et al. and Allemann et al.

Claim 18 is allowable by virtue of its dependence on claim 1, and also for its recitation of additional patentable features. Withdrawal of this rejection is respectfully requested.

Claims 24 and 25 were rejected under 35 U.S.C. §103(a) over Harte et al. in combination with Allemann et al., Gustafsson and Anderson as applied to claims 10-15 above and further in view of Mass. This rejection is respectfully traversed.

The Office Action relies on Mass to teach a simmer power supply. However, this does not remedy the deficiencies noted above with respect to Harte et al., Allemann et al., Gustafsson and Anderson.


Claims 24 and 25 are allowable by virtue of their dependence on claim 1, and also for their recitation of additional patentable features. Withdrawal of this rejection is respectfully requested.

All objections and rejections have been addressed. It is respectfully submitted that the present application is now in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached Appendix is captioned "Version with markings to show changes made".

Respectfully submitted,  
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Enclosure:  
Appendix

**APPENDIX**

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS:**

Please cancel claims 7, 9, 19-21, 27 and 28 without prejudice or disclaimer.

Please enter amended claim 8 as follows:

8. (Amended) Apparatus as claimed in claim 2 [claim 7], wherein said flow path forms a closed circuit around which said water [liquid] circulates.

**END OF APPENDIX**